

REMARKS

The Office Action mailed October 16, 2007, has been carefully considered by Applicant. Reconsideration is respectfully requested in view of the foregoing claim amendments and the remarks that follow.

Claim Rejections Under 35 U.S.C. §103(a)

Claims 33, 35, 37, 38 and 54 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Burton U.S. Patent Application Publication No. 2004/0163648 in view of Sarkela et al U.S. Patent No. 6,950,698. Claims 34, 36 and 39-42 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Burton U.S. Patent Application Publication No. 2004/0163648 in view of Sarkela et al '698 and further in view of Bennett et al U.S. Patent No. 6,233,472. Claims 43-52 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Burton '648 in view of Sarkela et al '698, Bennett et al '472 and Duckert et al U.S. Patent No. 6,389,312. Claim 53 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Burton '648.

By the present Amendment, claims 34, 38, 53 and 54 are cancelled, thus rendering the rejections thereof moot.

Independent claim 33 is amended to include the limitations of now cancelled claim 34. Independent claim 43 is amended to include the limitations of now cancelled claim 44. The claims are further amended to more particularly point out and distinctly claim the subject matter of the present invention.

Independent claims 33 and 43 now include steps of (1) placing the base element on the patient's head such that second and third electrodes in the array of electrodes are positioned *just posterior to the lower part of the pinna and just anterior to the tragus* and (2) utilizing the second and third electrodes in the array of electrodes *to stimulate a facial nerve and measure neuromuscular transmission*. These combined steps are neither taught nor suggested by the cited references.

The Examiner states on pages 3 and 4 of the Office Action that "Bennett teaches using electrodes positioned as recited in claim 34 to measure NMTs of a patient in surgery".

This is incorrect. Bennett et al '472 teaches an array of electrodes 102-112 and a stimulator electrodes 114L and 114H. The “stimulator electrodes” 114L and 114H are placed on the temple area above the ear. This is quite different than the claimed step of placing the first and second electrodes (which are utilized to “stimulate”) just posterior to the lower part of the pinna and just anterior to the tragus. An example of the arrangement provided by this method is shown on Fig. 1 of the present application.

When compared with Fig. 12 of Bennett et al '472, one will see that there are clear differences between the resultant arrangement of the present method and the arrangement shown in Fig. 12 of Bennett '472. The Examiner is also referred to, for example, pages 4 and 5, paragraphs 0016-0018 of the present application.

The remaining references, namely Sarkela et al '698, Burton '648 and Duckert et al '312 also do not teach or suggest the claimed method steps.

The combination of references cannot possibly be construed to teach the claimed method, because Bennett et al '472 actually teaches directly away from the claimed method. Bennett et al '472 suggests that electrodes 110 (minus) and 110 (plus), i.e. the fifth sensor, are placed near the ear of the patient and as stated above the “stimulator” electrodes 114H and 114L are placed considerably higher to the temple area of the patient, as shown in Fig. 12 of Bennett et al. This is completely different than the method steps recited in claims 34 and 43.

For the reasons stated above, claims 34 and 43 are not anticipated or rendered obvious by the cited references.

Claims 35-37 and 39-42 depend directly or indirectly from claim 33 and are thus believed allowable for the reasons stated above, as well as the detailed subject matter recited therein.

Claims 45-52 depend directly or indirectly from claim 43 and are thus believed in condition for allowance for the reasons stated above, as well as the detailed subject matter recited therein.

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Conclusion

The present application is thus believed in condition for allowance. Such action is respectfully requested.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Peter T. Holsen", written in a cursive style.

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